TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 763.

MAX HART, APPELLANT,

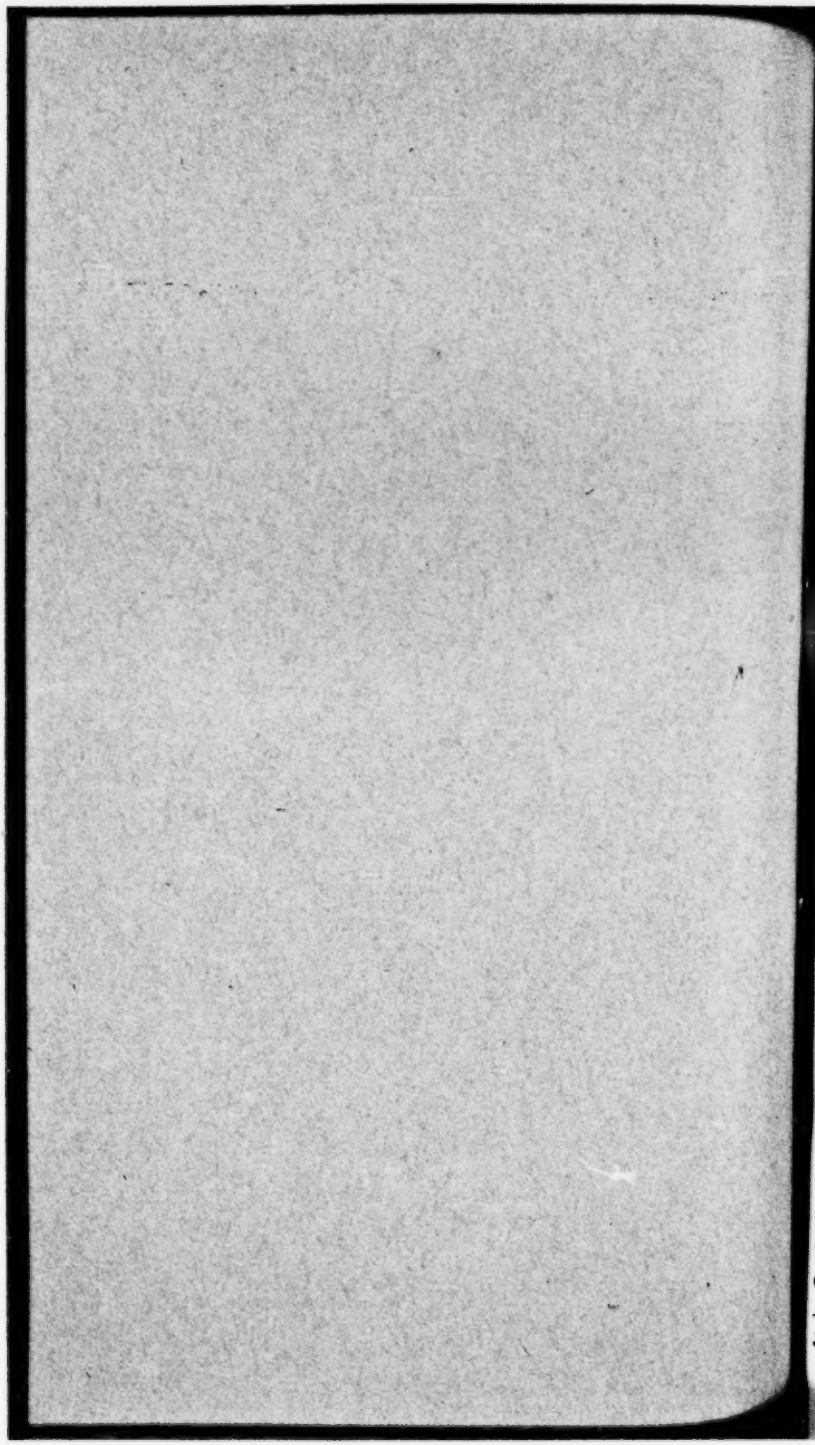
vs.

B. F. KEITH VAUDEVILLE EXCHANGE, ORPHEUM CIRCUIT, INC.; EXCELSIOR COLLECTION AGENCY, INC., *ET AL.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED DECEMBER 27, 1922.

(29,313)



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INDEX.

	Original.	Print.
Bill of complaint	1	1
Opinion, Mack, C. J.	52	29
Final decree	56	30
Certificate of jurisdictional question	58	31
Assignment of errors	59	31
Petition and order allowing appeal	60	32
Order *in re* transcript of record	61	32
Citation and service	62	33
Clerk's certificate	64	33

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 8, 1923.

1 United States District Court for the Southern District of New York.

In Equity. No. E.

MAX HART, Plaintiff,
against
B. F. KEITH VAUDEVILLE EXCHANGE, ORPHEUM CIRCUIT, INC., Excelsior Collection Agency, Inc., Edward F. Albee, John J. Murdock, Frederick F. Proctor, Morris Meyerfeld, Jr., Martin Beck, Frank Vincent, Reid Albee, Harry Jordan, Maurice Goodman, and Harry W. Gugler, Doing Business under the Trade Name and Style of Vaudeville Collection Agency, Defendants.

BILL OF COMPLAINT.

[Filed May 27, 1921.]

Plaintiff, by Eppstein & Axman, his attorneys, for his complaint, alleges:

I. Plaintiff is, and at all times herein mentioned was, a citizen and resident of the Southern District of New York.

II. The defendant B. F. Keith Vaudeville Exchange is, and at all times hereinafter mentioned was, a corporation duly or-
2 ganized and existing under and by virtue of the laws of the State of Maine, with an office and place of business in the City, State and Southern District of New York. It was formerly known under the name of United Booking Office of America, and at all times herein mentioned has been, and now is engaged in business in, and now may be found within the Southern District of New York; it is organized as a business corporation; has an authorized capital stock issued and outstanding; the purposes for which it is organized, according to its certificate of incorporation, are to contract with and engage acts, attractions, specialties, amusements, actors, musicians, singers, entertainers and performers for theatres, vaudeville entertainments and the like; to contract with theatres, vaudeville entertainments and the proprietors thereof for the appearance of acts, attractions, specialties, amusements and for the services of actors, musicians, singers, entertainers and performers at and for stated periods or otherwise; to act as the agent of theatres, theatrical and vaudeville proprietors and amusement enterprises; to do a "booking" business as said term "booking" is understood by theatres, theatrical and vaudeville proprietors and amusement enterprises; to manufacture theatrical scenery and properties; to lease, build, operate, manage, control, buy, sell, own, deal in theatres and other places of amusement and entertainment; to make any contracts necessary or convenient for the purposes of said business; to buy, own, hold, lease, sell and deal in any real estate and

such personal property as is necessary or incidental to the purposes set out; and to do any and all things necessary or incidental in connection with said business to enhance the value of the company's property or rights; it has an executive management consisting of a President, Vice-President, Secretary, Treasurer and other lesser officers, some of whom reside in the City of New York and
3 are employed by it, and among other places, exercise their respective functions at said City of New York.

III. The defendant Orpheum Circuit, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, with an office and place of business in the City, State and Southern District of New York. It is the successor to Central Vaudeville Promotion Company, and at all times herein mentioned it and its predecessor has been and now is engaged in business, and now may be found within the Southern District of New York; it is organized as a business corporation, has an authorized capital stock issued and outstanding; the purposes for which it is organized, according to its certificate of incorporation, are to purchase, lease, own or otherwise acquire and to manage theatres, music halls, opera houses and places of amusement and entertainment; to sell, mortgage, let or otherwise dispose of such theatres and other places of amusement; to provide for the production, representation and performance of operas, stage plays, dramas, comedies, burlesque performances, vaudeville performances, ballets, pantomimes, moving pictures and other musical and dramatic performances and entertainments and to carry on a general theatrical business; to act as agent for theatres and other places of amusement and entertainment and the owners and persons conducting the same and to act as agent for actors, singers, musicians, performers and entertainers of every kind; to do a booking business as the term "booking" is understood by the proprietors of theatres and the theatrical profession generally; and to maintain and conduct a theatrical employment agency; to purchase and otherwise acquire and to sell or otherwise dispose of and deal in plays, sketches, copyrights, dramatic
4 and musical productions and rights of every kind therein, and licenses and privileges of every sort for the purposes of said business; to purchase, manufacture or otherwise dispose of and deal in theatrical properties and scenery, and to maintain and operate theatrical information, press and art bureaus and to conduct a photograph business; to apply for, register, obtain, purchase, lease or otherwise acquire and hold, own, use and operate or introduce and sell, assign or otherwise dispose of or grant license in respect of or otherwise turn to account any and all trade marks, trade names, patents, inventions, improvements and processes used in connection with or secured under letters patent of the United States or elsewhere or otherwise; and with a view to working and development of the same, to carry on any business, whether manufacturing or otherwise, which this corporation may deem calculated, directly or indirectly, to effectuate these objects; to acquire by purchase or otherwise, and to own, hold, sell, lease, mortgage or otherwise dispose of all such property as the purposes of this corporation shall require, or which

may be necessary and proper to be used in connection with the business of the corporation, and to do and perform any and all acts and things not herein specifically enumerated, which may be necessary to be done or performed in order to properly carry on or conduct the business of the corporation, and to advance the interests thereof; the corporation shall have power to acquire by purchase or otherwise the whole or any part of the business, good will, property, assets and contracts of any person, firm or corporation engaged in a business of the same general character as that for which this corporation is organized, if the same are, in the judgment of the Board of Directors, useful to the business of the corporation, and may pay therefore in stocks, bonds, notes, debentures or other obligations of the corporation; the corporation may purchase, acquire, hold, sell, assign, transfer, pledge or otherwise dispose of the shares of the capital stock, bonds or other evidences of indebtedness of any corporation of the State of New York or of any other State or elsewhere, and in so purchasing, holding or otherwise acquiring such stock, bonds or other evidences of indebtedness to issue in exchange, its stock, bonds, debentures or other obligations; and the corporation may guarantee the bonds of any domestic corporation engaged in the same general line of business.

IV. On information and belief, that the defendants Murdock, E. F. Albee and Proctor are directors of the defendant B. F. Keith Vaudeville Exchange; Edward F. Albee is its President; Frederick F. Proctor is its Vice-President, and John J. Murdock is its General Manager. E. F. Albee is the person duly designated by said company upon whom process may be served within the State of New York, and said E. F. Albee has an office and place of business in the Borough of Manhattan, City and State of New York, which is the place where said corporation has its principal place of business within this State.

V. On information and belief, that said defendants E. F. Albee, Proctor, Murdock, Maurice Goodman, Harry W. Gugler and Frank Vincent are citizens and residents of the Southern District of New York, and each and all of them may now be found in said district.

VI. On information and belief, defendants Meyerfeld, Jr., and Beck are engaged in business, have an office and place of business and may now be found in the City, State and Southern District of New York, and the said Beck has his place of residence in the aforesaid City, State and Southern District of New York.

VII. On information and belief, that the defendants Meyerfeld, Jr., and Beck are stockholders of the defendant Orpheum Circuit, Inc., and control its affairs, and they controlled the affairs of its predecessor, Central Vaudeville Promotion Company. Meyerfeld, Jr., is President and Beck is the General Manager of Orpheum Circuit, Inc., and as such General Manager Beck has an office and place of business in the City and Southern District of New York, which is the place where said Orpheum Circuit, Inc., has its principal place of business.

VIII. Upon information and belief, the defendant Excelsior Col-

lection Agency, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of New York, with an office and place of business in the City, State and Southern District of New York, and at all times hereinafter mentioned has been and is engaged in business and may be found within the Southern District of New York, and is organized as a business corporation and has authorized capital stock issued and outstanding. The purposes for which it is organized, among others, is to act as a collection agent for money from the salaries of the various acts, troupes and performers appearing on what is known as the Orpheum Circuit, the said corporation is dominated and controlled by the defendants Meyerfeld, Jr., Martin Beck and Frank Vincent and Orpheum Circuit, Inc., and upon information and belief its capital stock is owned and controlled by some of the said individual defendants.

IX. On information and belief, that the defendant Harry
7 W. Gugler does business under the firm name and style of Vaudeville Collection Agency, a registered trade name, and conducts an office and place of business in the City, State and Southern District of New York, and at all times hereinafter mentioned has been, and now is, engaged in business and may be found within the Southern District of New York. The business transacted by the said defendant Gugler was at all times herein mentioned, and now is, to act as a collection agent for money from the salaries of various acts, troupes and performers appearing on what is known as the Keith Circuit and the said Harry W. Gugler and his said business is dominated and controlled by the defendants Edward F. Albee, Frederick F. Proctor, John J. Murdock, Reid Albee, Harry Jordan, Maurice Goodman and B. F. Keith Exchange.

X. On information and belief, that the defendants herein, either separately or jointly, by themselves or with other persons, own or control and operate, and at all times herein mentioned have owned or controlled and operated theatres in divers cities throughout the United States, and among such theatres are the following: The Fordham, Palace, 81st Street, Coliseum, Hamilton, Riverside, Harlem Opera House, Regent, The Colonial, Alhambra and Bronx Theatres, East 125th Street, 58th Street and Third Avenue, Fifth Avenue, 23rd Street, in the city and State of New York; the Prospect in Brooklyn; Proctor's Troy, Albany, Schnectady, and Proctor's Theatre, Newark, N. J.; B. F. Keith's Theatre, in the City of Boston in the State of Massachusetts; The Orpheum, Bushwick and Greenpoint Theatres, in the Borough of Brooklyn, City and State of New York; Mt. Vernon Theatre, at Mt. Vernon, N. Y.; B. F. Keith's New Theatre, in the City of Philadelphia, in the State of Pennsylvania;
the Hippodrome Theatre, in the City of Cleveland, in the
8 State of Ohio; B. F. Keith's Theatre, in the City of Columbus in the State of Ohio; B. F. Keith's Theatre, in the City of Toledo, in the State of Ohio; the Columbia Theatre, in the City of Cincinnati, in the State of Ohio; B. F. Keith's Theatre, in the City of Louisville, in the State of Kentucky; the Grand Opera House, in the City of Indianapolis, in the State of Indiana; the Bijou Theatre in the City of Boston, in the State of Massachusetts; the New Theatre

in the City of Portland, in the State of Maine; Chase's Theatre, in the City of Washington, in the District of Columbia; the Temple Theatre, in the City of Syracuse, in the State of New York; and at all such times were and now are engaged in the business, as hereinafter more particularly described, of producing and presenting what is known as big-class vaudeville theatrical performances at said theatres.

XI. On information and belief, that defendant Albee also owns or controls and operates, and at all times herein mentioned has owned or controlled and operated, theatres in divers cities throughout the United States, and among such theatres are the following: B. F. Keith's Theatre, in the City of Lowell, in the State of Massachusetts; B. F. Keith's Theatre, in the City of Province, in the State of Rhode Island; and at all such times he was and now is engaged in the business, as hereinafter more particularly described, of producing and presenting what is known as high-class vaudeville theatrical performances at such theatres; Harry Davis' Grand Opera House, in the City of Pittsburgh, in the State of Pennsylvania; Kernan's Maryland Theatre, in the City of Baltimore, in the State of Maryland; Shea's Theatres, respectively, in the City of Buffalo, in the State of New York; and Toronto, in the Dominion of Canada; The Temple Theatres, respectively, in the Cities of Detroit, in
9 the State of Michigan, and Rochester, in the State of New York; S. Z. Poli's Theatres, respectively, in the Cities of Worcester and Springfield, in the State of Massachusetts; Hartford, New Haven, Bridgeport and Waterbury, in the State of Connecticut; and Wilkes-Barre and Scranton, in the State of Pennsylvania; the Temple Theatre, in the City of Hamilton, in the Dominion of Canada; the Orpheum Theatre, in the City of Montreal, in the Dominion of Canada; the Dominion Theatre, in the City of Ottawa, in the Dominion of Canada; the Auditorium Theatre, in the City of Quebec, in the Dominion of Canada; Henderson's Music Hall, at Coney Island, in the State of New York; Brighton Beach Music Hall, in the City and State of New York; Morrison's Music Hall, in the City of Rockaway, in the State of New York; the Lynn Theatre, at the City of Lynn, in the State of Massachusetts; the Colonial Theatre, in the City of Dayton, in the State of Ohio; the Shubert Theatre, in the City of Utica, in the State of New York, and the Orpheum Theatres in the Cities of Reading, Allentown, Harrisburg and Altoona, in the State of Pennsylvania; the Colonial and Lyric Theatres, in the City of Richmond, in the State of Virginia; the Colonial Theatre, in the City of Norfolk, in the State of Virginia; Dockstader's Garrick Theatre, in the City of Wilmington, in the State of Delaware; the Hudson Theatre, in the City of Union Hill, in the State of New Jersey; the Forsythe Theatre, in the City of Atlanta, in the State of Georgia; the Colonial Theatre, in the City of Erie, in the State of Pennsylvania, and B. F. Keith's Theatre, in the City of Atlantic City, in the State of New Jersey.

XII. On information and belief, defendants Meyerfeld, Jr., and Beck own or control and operate, and at all times herein mentioned have owned or controlled and operated, theatres in divers

10 cities of the United States, and among such theatres are the following: The Orpheum Theatre, in the City of San Francisco, in the State of California; the Orpheum Theatre, in the City of Los Angeles, in the State of California; the Orpheum Theatre, in the City of Oakland, in the State of California; the Orpheum Theatre, in the City of New Orleans, in the State of Louisiana; the Orpheum Theatre, in the City of Kansas City, in the State of Missouri; the Orpheum Theatre, in the City of Omaha, in the State of Nebraska; the Orpheum Theatre, in the City of Denver, in the State of Colorado; the Orpheum Theatre, in the City of St. Paul, in the State of Minnesota; the Orpheum Theatre, in the City of Minneapolis, in the State of Minnesota; the Orpheum Theatre, in the City of Salt Lake City, in the State of Utah; the Orpheum Theatre, in the City of Memphis, in the State of Tennessee; the Orpheum Theatre, in the City of Sioux City, in the State of Iowa; The State Lake, in the City of Chicago, State of Illinois; The Majestic Theatre, the Chicago Grand Opera House, the Olympic Theatre, in the City of Chicago, in the State of Illinois; the Columbia Theatre and Palace Theatre, in the City of St. Louis, in the State of Missouri; the Majestic Theatre, in the City of Des Moines, in the State of Iowa; the Majestic Theatre and the Palace Theatre, in the City of Milwaukee, in the State of Wisconsin; the Orpheum Theatre, in the City of Evansville, in the State of Indiana; the Orpheum Theatre, in the City of Duluth, in the State of Minnesota; the Orpheum Theatre, in the City of Winnipeg, in the Dominion of Canada; the Orpheum Theatre, in the City of Lincoln, in the State of Nebraska; the Orpheum Theatres, in the Cities of Spokane and Seattle, in the State of Washington; the Orpheum Theatre, in the City of Portland, in the State of Oregon; and now are, and at all times herein mentioned have been, engaged

11 in the business, as hereinafter more particularly described, of producing and presenting what is known as high-class vaudeville theatrical performances at such theatres. All of the said theatres are known as and comprise the Orpheum Circuit.

XIII. The theatres enumerated in paragraph "XII" hereof constitute a group or circuit of theatres which are, and at all times herein mentioned were, known in the theatrical and vaudeville business and to the theatrical and vaudeville trade and to those engaged therein as the Orpheum Circuit of theatres and will be hereinafter referred to as the "Orpheum Circuit."

XIV. The theatres enumerated in paragraphs "X" and "XI" hereof constitute a group or circuit of theatres which are, and at all times herein mentioned were, known in the theatrical and vaudeville business and to the theatrical and vaudeville trade and to those engaged therein as the Keith Circuit of vaudeville theatres, and will hereinafter be referred to as the "Keith Circuit."

XV. Vaudeville, as the term is used and understood throughout the United States and in the Dominion of Canada, consists of an entertainment for hire, extending over a period of time of from two or three hours, during the day or night, upon the stage of a regularly licensed theatre or playhouse, where in return for one

admission fee the spectators are afforded the opportunity of witnessing a number of disassociated, short performances by actors, acrobats, musicians, singers, dancers, exhibitors, conjurers, athletes and other entertainers, and high-class vaudeville is vaudeville as above defined performed by high-class artists and acts at theatres having but two performances a day.

12 XVI. The business, trade and commerce of producing vaudeville, as hereinbefore defined, is conducted by six classes of persons, to wit:

(*a*) Authors of vaudeville acts or productions.
(*b*) The producers of vaudeville acts and productions.
(*c*) Performers.
(*d*) Managers or personal representatives.
(*e*) Booking agents or agencies.
(*f*) Theatre proprietors.

(A) The authors of vaudeville acts or productions are persons who conceive and create the script and/or action and/or arrangement of the acts.

The acts when so created are usually copyrighted, and the authors are the owners of the property rights in the property so created by them, and when copyrighted, have the exclusive right to print, re-print, publish, copy and vend the copyrighted work; to perform or represent the copyrighted work published; to vend any manuscript or any record whatsoever, thereof; to make or to procure the making of any transcript or record thereof by or from which, in whole or in part, it may in any manner or by any method be exhibited, performed, represented, produced or reproduced; and to exhibit, perform, represent, produce or reproduce it in any manner or by any method whatsoever.

The authors of the acts next attempt either to produce the act themselves, or to contract for its production.

(B) The producers of vaudeville acts or productions consist of individuals, copartners or corporations engaged in the business of organizing and building vaudeville acts, and the production 13 involves the acquisition from the author of the rights to produce; the purchase of such costumes, scenery, mechanical and electric effects or whatever may be necessary to produce the acts, and generally the employment of performers, and finally, the direction and rehearsal of the act, until it becomes the production conceived by the author, and is ready for booking.

When the production is ready for booking, the producer's next step is to secure contracts for such acts, and practically all negotiations for such contracts not only contemplate, but if successful, result in the transportation of such acts from State to State, throughout a part, if not all of the States and Territories of the United States of America and Canada.

(C) The class of performers embraces actors, acrobats, athletes, musicians, singers, jugglers, conjurers and a great many other entertainers.

(D) The class of managers or personal representatives embrace those who are regularly engaged as the personal representatives and business managers of those embraced in the foregoing two classes.

(E) The class of booking agents or booking agencies, embrace those agencies which arrange for contracts between the proprietors of theatres and the owners of acts and/or performers.

(F) The class of proprietors embrace the owners, lessees and proprietors of theatres and playhouses who are engaged in presenting vaudeville entertainment for hire; this latter class contracts with those embraced in the first, second and third classes for completed production, usually through the agencies of those embraced in the fourth and fifth classes.

14 The proprietors own, lease or control theatres and playhouses, at which and in connection with which they employ numerous persons, such as stage hands, property men, carpenters, electricians, ushers, ticket sellers, stage managers, conductors and musicians; they purchase and cause to be manufactured and shipped to them at such theatres and playhouses large quantities of valuable scenery, furniture, fixtures and costumes, some of which is purchased in a State other than that in which such theatre or playhouse is located, and shipped from such State to the State where such theatre or playhouse is located; these proprietors also purchase and cause to be manufactured for and shipped to them great quantities of advertising matters, such as bill posters and hand bills, much of which they cause and procure to be transported in interstate and foreign commerce; they also cause and procure to be printed, and thereafter offer the same for sale, and do sell, tickets of admission to the entertainments which they are engaged in producing, and for which tickets they receive large sums of money.

As a further part of the aforesaid business, trade and commerce, said theatre proprietors enter into contracts with the producers and owners of vaudeville acts wherein and whereby such acts are contracted for to appear at said proprietor's theatres. Said contracts are known as and referred to as "booking contracts."

Such acts are generally booked in New York, and the contracts contemplate and result in the transportation of the acts, which, of course, include the performers, scenery, music, costumes, and whatever constitutes the act, from State to State, and from, to, through and among the various States and Territories of the United States of America, and of the District of Columbia, and the said

14½ business has grown to such proportions, that there is a constant stream of commerce in and among the States and from State to State, and through the various Territories of the United States, in said business.

The transportation of these acts is not only an essential element of the contracts, but is one of the greatest importance involving in many cases, the use of large quantities of accessories, and special transportation equipment and facilities.

15 XVII. The aforesaid theatres in the aforesaid Keith Circuit and Orpheum Circuit constitute and are practically all of the theatres in the United States and the Dominion of Canada at which high-class vaudeville entertainments are produced.

XVIII. All persons who perform in vaudeville in the United

States and Canada aspire to obtain employment by the owners and operators of said theatres in said Keith Circuit and Orpheum Circuit, and no high class performer who is debarred therefrom can obtain sufficient employment in vaudeville at any other theatres in the United States and the Dominion of Canada, at which high class vaudeville entertainments are produced, from which he or she can earn a living.

XIX. Plaintiff at all times hereinafter mentioned has maintained, and but for the acts hereinafter complained of would have
16 maintained, an office and place of business in the City of New York and State of New York, and has laid out and expended large sums of money in building his organization and now has large sums of money invested in his aforesaid business; by the expenditure of large sums of money, and through the medium of extensive advertising throughout the United States, plaintiff's business has become widely known through the whole of the United States of America. Plaintiff keeps the owners and proprietors of theatres and playhouses advised of the latest attractions and successes in vaudeville, and also keeps the performers advised of the most desirable places at which they may present their performances; through this comprehensive acquaintance with the vaudeville situation, plaintiff has been enabled to and does conduct a large business as manager and personal representative of vaudeville performers and acts, and has organized a large substantial interest in many acts which he has always represented; for many years he has been employed by many of the most successful and best known vaudeville performers to act as their manager and personal representative; many such performers have, from time to time, employed plaintiff and paid him large sums of money for acting as their manager and personal representative. Plaintiff's business as such manager and personal representative, among other things, has consisted and does consist in contracting with such performers to negotiate for them with the proprietors of theatres and playhouses for the employment of such performers by said proprietors; to arrange a series of employments in various countries and cities; to arrange an itinerary of performances for such performers so as to keep them continuously employed, and to reduce the amount and expense of their traveling to a minimum; to furnish such performers with information as to the most available and satisfactory routes of travel,
17 the most satisfactory hotels at which to stop, the customs and manners of the various countries which they are to visit, and where they are to travel from one country to another; to arrange for such performers the necessary papers to be used in their dealings with the customs, immigration and other Government officials. Many of the performers who have employed plaintiff's services are actors, performers, jugglers, conjurers, acrobats and various other kinds of entertainers, operating either alone or what is known as acts or troupes acting together, who as a part of their performances have to and do avail themselves of the use of large quantities of scenery, costumes, fixtures and apparatus, animals, birds and rep-

tiles, which belong to them and which they carry with them from place to place and from state to state in the United States of America; in such cases where plaintiff has been employed as manager or personal representative, he in many instances as a part of his employment has attended to the transportation and shipment of such scenery, costumes, fixtures, apparatus, animals, birds and reptiles, and in many cases this is and has been a very large part of plaintiff's business aforesaid. Most, if not all, of the performers engaged in vaudeville have advertising matter, consisting of bill posters and photographs, which are distributed, posted and circulated in the cities where such performers are to appear, and as a part of plaintiff's business as manager and personal representative for such performers he has attended and does attend to the procuring of such advertising matter and to the preparation of the same and to its shipment from one country to another and from one state to another state in the United States, and to its publication and distribution in advance of the appearance of such performers, and produces and assists in the production and staging of acts; as-
18 sists in financing acts and/or teams; supplies and assists the said acts and performers in securing scenery, props, costumes and other supplies; assists, arranges and provides booking for said acts and performers; and for the aforesaid services plaintiff has been and is paid by such performers. By reason of the excellence of the service which plaintiff has rendered and does render to his aforesaid patrons, and by reason of his world-wide acquaintance and familiarity with the conditions of the vaudeville business, and by reason of his courteous and efficient treatment of his patrons and the success attained by such patrons through plaintiff's services as aforesaid, plaintiff has built up and attained a very remunerative business and a good will of great value and has earned, and until the wrongful misconduct of these defendants, as hereinafter more particularly described, was earning, large sums of money from his aforesaid business, to wit, about the sum of $50,000 annually, and said business was constantly growing in value until the acts herein complained of occurred, and but for such unlawful acts would have continued to grow.

XX. For many years plaintiff, as manager and personal representative of many of the leading vaudeville performers, negotiated for them contracts of employment to perform at all or nearly all of the aforesaid theatres in the aforesaid Keith and Orpheum Circuits, and for such services has received large sums of money from such performers; and at all times since the establishment of defendant B. F. Keith Vaudeville Exchange, plaintiff as manager and personal representative of many of the most prominent vaudeville performers negotiated for them contracts of employment to perform in vaudeville at all or nearly all of the aforesaid theatres in the aforesaid Keith's Circuit, and such contracts of employment were so negotiated through said defendant B. F. Keith Vaudeville Exchange.

19 XXI. At all times since the establishment of defendant Orpheum Circuit, Inc., and its predecessor, Central Vaude-

ville Promotion Company, plaintiff as manager and personal representative of many of the most prominent vaudeville performers negotiated for them contracts of employment to perform in vaudeville at all or nearly all of the aforesaid theatres in the aforesaid Orpheum Circuit, and such contracts of employment were so negotiated through said Orpheum Circuit, Inc., and/or its predecessor, Central Vaudeville Promotion Company.

XXII. Through plaintiff's oragnization, and because of his efficient services as aforesaid, he has succeeded in bringing and causing and procuring to come to the United States of America, and in obtaining employ*ing* for them to perform in vaudeville at the aforesaid theatres in the aforesaid Keith Circuit and Orpheum Circuit, a great number of first class and recognized vaudeville stars.

XXIII. That as a result of plaintiff's knowledge of the vaudeville business, his ability in assisting performers in properly presenting their talent to the best advantage to the public; of procuring for them the proper vehicles for presentation of their skill; of revising their acts, and of the other services hereinbefore set forth, plaintiff has secured for the performers he has represented the most advantageous terms possible, and has come to be recognized as one of the ablest and most successful personal representative and manager of vaudeville performers and acts in the United States of America, and has constantly increased the earning capacity and professional standing of the artists and performers he has represented. Plaintiff has devoted the past fifteen years of his life to developing his knowledge of the aforesaid business, and has acquired special proficiency in the line of his business and profession, and as a result of his services aforesaid, and of his recognized fidelity to the interests of his clients, his business and his reputation and earnings were constantly increased, and but for the unlawful acts of the defendants hereinafter complained of would have continued so to increase.

XXIV. Defendants E. F. Albee, Proctor, Meyerfeld, Jr., Beck and J. J. Murdock, and other of the defendants herein, either together and/or alone, as hereinbefore stated, own or control and operate a large number of theatres throughout the United States; at all of these theatres they are, and at all times herein mentioned have been, engaged in the business of producing vaudeville entertainments for hire; and in connection with and as a part of such business they are, and at all times herein mentioned have been, engaged in employing a large number of persons, to wit, stage managers, laborers, carpenters, electricians, conductors, musicians, ushers, doorkeepers and ticket sellers, such persons render services in connection with the performances of vaudeville at such theatres and are paid by said defendants for such services; said defendants also, in connection with and as a part of the said business, employ agents, who are located in the City of New York, who act for them in employing persons to perform in vaudeville for them in their aforesaid theatres, and through such agents said defendants from time to time enter into contracts with performers such as actors, acrobats, athletes, conjurers, jugglers, singers, musicians and various

other entertainers, wherein and whereby said performers agree to travel from one city in one state to another city in another state of the United States and to perform in vaudeville for said defendants at their theatre in the latter place, and as a result of

21 such contracts performers do travel and have traveled from one state to another state of the United States and have performed and do perform in vaudeville for said defendants at their aforesaid theatres, and such performers have been and are paid for such services by said defendants, and as a part of their aforesaid business said defendants have entered into and do enter into contracts with performers wherein and whereby such performers have agreed and do agree to come to the United States from a foreign country, and upon arriving in the United States to perform in vaudeville for said defendants at their aforesaid theatres, and wherein and whereby said defendants have agreed and do agree to pay said performers for such services, and as a result of such contracts said performers have and do come to the United States from foreign countries, to wit, Europe, Asia and other countries, and have performed and do perform in vaudeville for said defendants at their aforesaid theatres, and have been and are paid therefor by said defendants. And, in many instances, said performers have brought and do bring with them, from such foreign countries to the United States, large quantities of paraphernalia such as scenery, costumes and fixtures, animals, birds and reptiles, which they have transported and caused to be transported to the United States, and from one city in one state to another city in another state of the United States in connection with and as a part of their work in performing for said defendants in vaudeville at their aforesaid theatres as aforesaid wherefore plaintiff claims defendants to have been and to be engaged in trade and commerce among the several states of the United States and with foreign nations within the meaning of the Act of Congress approved July 2, 1890, and entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies."

22 XXV. On information and belief, that in the case of many of the theatres hereinbefore stated to be owned or controlled and operated by the defendants E. F. Albee, Proctor, J. J. Murdock, Meyerfeld, Jr., and Beck, they do not actually own the theatre building, but the same is owned or leased by a corporation or corporations organized, dominated and/or controlled by said defendants, and said corporation or corporations owns or own, leases or lease, and at all times herein mentioned has or have owned or leased the teatre building; but in all such cases said defendants own, and at all times herein mentioned have owned, a large majority if not all, of the capital stock of such corporation or corporations and at all times herein mentioned they have absolutely dominated said corporation or corporations and managed and controlled its theatre building to all intents and purposes as if the same were actually owned by them; and in all such cases said defendants have regulated and controlled every detail of the business of producing vaudeville at such theatres and have caused and procured the employment and discharge of all persons connected therewith, and

dictated and controlled the character of performances produced at such theatres and caused and procured the employment of performers to perform in vaudeville at such theatres; many such theatres so dominated, controlled and managed by them are located in states other than the State of New York; and in connection with and as a part of their aforesaid domination, management and control of said theatres they have caused and procured, at all times herein mentioned, their agents, servants and employees in the City and State of New York to enter into and conduct negotiations with performers looking to the employment of such performers to appear and perform for them in vaudeville at such theatres; and as a result
23 of such negotiations, said agents, servants and employees have caused and procured contracts to be entered into and do cause and procure such performers to travel from said City of New York to said theatres in states other than the State of New York, and to perform in vaudeville for said defendants and their aforesaid corporations, and said defendants have caused and procured and do cause and procure said performers to be paid therefor; and so plaintiff claims defendants to have been and to be engaged in business, trade and commerce, among the several states of the United States, within the meaning of the aforesaid Act of Congress.

XXVI. On information and belief, that the defendants E. F. Albee, Proctor, Meyerfeld, Jr., and Beck, in connection with and as a part of the business of producing vaudeville at the theatres dominated, managed and controlled by them, as stated in the last preceding paragraph, have at all times herein mentioned caused and procured their agents, servants and employees located in the City and Southern District of New York to enter into and conduct negotiations with vaudeville performers located in Europe, looking to and resulting in said vaudeville performers coming to the United States of America to perform for hire in vaudeville performances at said theatres; and in such instances, and there have been many such, that being a regular part of said defendants' business, said performers have so come to the United States as a result and because of written agreements between them and said defendants' agents, servants and employees aforesaid; and in many such cases said performers, in compliance with and as a part of their aforesaid agreements, have brought with them and caused and procured to be transported from Europe to the United States, large quantities of scenery, fixtures, costumes, animals, birds and reptiles and other paraphernalia; and for their coming to the United States, and bringing and causing to be brought such paraphernalia as aforesaid, and for performing in vaudeville at such theatres, said defendants have at all times herein mentioned caused and procured said vaudeville performers to be paid; and so plaintiff claims defendants to be, and at all times herein mentioned to have been, engaged in business, trade and commerce with foreign nations within the meaning of the aforesaid Act of Congress.
24

XXVII. On information and belief, that the entire capital stock of the defendant B. F. Keith Vaudeville Exchange, at all times hereinafter mentioned, has been owned by A. Paul Keith and the

defendants Edward F. Albee, Frederick F. Proctor and John J Murdock, and at all times herein mentioned, prior to the death of the said A. Paul Keith, they have dominated and controlled the management of the entire business of said corporation defendant, and since the death of the said A. Paul Keith the defendants Edward F. Albee, Frederick F. Proctor and John J. Murdock have dominated and controlled the management of the said entire business.

XXVIII. On information and belief, that the majority of the capital stock of the defendant Orpheum Circuit, Inc., and its predecessor, Central Vaudeville Promotion Company, is, and at all times herein mentioned has been, owned by the defendants Morris Meyerfeld, Jr., and Martin Beck; that said defendants caused and procured said company to be incorporated and at all times since its incorporation have dominated and controlled and now dominate and control its entire business.

XXIX. The business in which the defendant B. F. Keith Vaudeville Exchange is, and at all times since its incorporation has
25 been, engaged consists in employing vaudeville performers to perform in vaudeville for the defendants E. F. Albee, Proctor and Murdock at the theatres owned or controlled and operated by them respectively, as hereinbefore stated; it is the agent for said defendants in the City and Southern District of New York, and at all times herein mentioned, as such agent, it has been engaged in entering into and conducting negotiations with vaudeville performers looking to and resulting in the employment of such performers to perform in vaudeville for said defendants at their respective theatres aforesaid; and as such agent for said defendants, from time to time, and as a regular part of its business, it has entered into and conducted negotiations with various and sundry persons who have been and are acting as managers and personal representatives of vaudeville performers; and among such managers and personal representatives of such vaudeville performers with whom said defendant has heretofore entered into and conducted such negotiations has been this plaintiff; that as a regular part of its business said defendant dealt with this plaintiff and through this plaintiff arranged for and procured contracts for the employment of various and sundry vaudeville performers for whom plaintiff was acting in the capacity of manager and personal representative as aforesaid, and in and by such contracts so procured said defendant as agent, as aforesaid, employed and agreed to employ said vaudeville performers to perform in vaudeville for said defendants E. F. Albee and Proctor, respectively, at their aforesaid theatres throughout the United States. And in conducting the aforesaid negotiations looking to and resulting in the employment of said performers as aforesaid, and as a part of its business, said defendant has caused and procured said performers to agree to travel from one state to another state in the United States and to perform in vaudeville in such latter state; and as a
26 result of such agreements said performers have traveled and do travel from one state to another state in the United States; and in such negotiations, and as a part of its said business, said defendant has caused and procured performers to agree to travel from a

foreign country to the United States and to perform in vaudeville in the United States, and as a result of such agreements said performers have traveled from foreign countries, to wit, Germany, France, England, Australia and other countries to the United States and have, after such travel, performed in vaudeville in the United States; and in such negotiations, and as a part of its said business, said defendant has caused and procured performers to agree to travel from the United States to and to perform in vaudeville in the Dominion of Canada, and as a result of such agreements said performers have traveled from the United States, and after such travel have performed in vaudeville in the Dominion of Canada; and so plaintiff claims defendant to have been and to be engaged in trade and commerce among the several states of the United States and with foreign nations within the meaning of the aforesaid Act of Congress; and a further part of the business in which said defendant is, and at all times herein mentioned has been, engaged consists in employing vaudeville performers to perform in vaudeville for the owners of the theatres hereinbefore enumerated as being in the Keith Circuit other than those owned or controlled and operated by the defendants Albee and Proctor; it is the agent of the owners and proprietors of such theatres and has done for them, and is doing for them, services in all respects similar to what it is doing and has done for said defendants E. F. Albee, Proctor and Murdock as hereinbefore described.

XXX. The business in which the defendant Orpheum Circuit, Inc., is, and its predecessor, Central Vaudeville Promo-
27 tion Company, was, and at all times since their incorporation have been, engaged consists in employing vaudeville performers to perform in vaudeville for defendant Meyerfeld, Jr., and Beck at the theatres owned or controlled and operated by them respectively as hereinbefore stated; it is the agent for said defendants in the City and Southern District of New York, and at all times herein mentioned, as such agent it has been engaged in entering into and conducting negotiations with vaudeville performers looking to and resulting in the employment of such performers to perform in vaudeville for said defendants at their respective theatres aforesaid; and as such agent for said defendants, from time to time, and as a regular part of its business, it has entered into and conducted negotiations with various and sundry persons who have been and are acting as managers and personal representatives of vaudeville performers; and among such managers and personal representatives of such vaudeville performers with whom said defendant has heretofore entered into and conducted such negotiations has been this plaintiff; that as a regula*t*or part of its business said defendant dealt with this plaintiff and through this plaintiff arranged for and procured contracts for the employment of various and sundry vaudeville performers for whom plaintiff was acting in the capacity of manager and personal representative as aforesaid, and in and by such contracts so procured said defendant as agent as aforesaid employed and agreed to employ said vaudeville performers to perform in vaudeville for defendants Meyerfeld, Jr., and Beck, respectively, at their aforesaid theatres throughout the United States. And in conducting the aforesaid negotiations looking to and resulting in the employment of said per-

formers as aforesaid, and as a part of its business, said defendant has caused and procured said performers to agree to travel from
28 one state to another state in the United States and to perform in vaudeville in such latter state; and as a result of such agreement said performers have traveled and do travel from one state to another state in the United States; and in such negotiations, and as a part of its said business, said defendant has caused and procured performers to agree to travel from a foreign country to the United States and to perform in vaudeville in the United States, and as a result of such agreements said performers have traveled from foreign countries, to wit, Germany, France, England, Australia and other countries to the United States, and have, after such travel, performed in vaudeville in the United States; and in such negotiations, and as a part of its said business, said defendant has caused and procured performers to agree to travel from the United States to, and to perform in vaudeville in, the Dominion of Canada, and as a result of such agreements said performers have traveled from the United States to, and after such travel have performed in vaudeville in, the Dominion of Canada; and so plaintiff claims defendant to have been and to be engaged in trade and commerce among the several states of the United States and with foreign nations within the meaning of the aforesaid Act of Congress; and a further part of the business in which said defendant is, and at all times herein mentioned has been, engaged consists in employing vaudeville performers to perform in vaudeville for the owners of the theatres hereinbefore enumerated as being in the Orpheum Circuit other than those owned or controlled and operated by the defendants Morris Meyerfeld, Jr., and Martin Beck; it is the agent of the owners and proprietors of such theatres and has done for them, and is doing for them, services in all respects similar to what it is doing and has done for said defendants Meyerfeld, Jr., and Beck, as hereinbefore described.

29 XXXI. Defendants B. F. Keith Vaudeville Exchange and Orpheum Circuit, Inc., unlawfully own, operate, dominate, control and maintain in the City, County and State of New York a booking exchange for vaudeville acts known as the "floor." The said "floor" consists of two parts, upon one of which acts, performers, entertainments and entertainers are booked upon the Orpheum and Keith Circuits, and in the other houses dominated by the defendants in what is known as the two-performances-a-day houses; on the other of the said parts acts, performers, entertainments and entertainers are booked upon the Orpheum and Keith Circuits, and in the other houses dominated by the defendants in what is known as the three-performances-a-day houses. The said booking exchange or "floors" were organized by the said defendants for the purpose and with the intent to unduly restrict competition and to unduly obstruct the course of trade in the said business conducted by the said defendants herein, and to unlawfully and improperly create a monopoly in the said business, and with the intent and purpose of giving to these defendants and their associates the practical monopoly of the entire high class vaudeville business in the United States of America; and the operation of said "floor" under the rules and regulations, con-

tracts and combinations entered into between the said defendants and the parties who are admitted to the privileges of using said "floors" or exchange had the effect of unduly restrictinng competition, and of unduly obstructing the course of trade in the said business in which the said defendants are engaged and of unlawfully creating a monopoly of the entire high class vaudeville business, and of the business of negotiating contracts for vaudeville acts, performers and entertainments in interstate commerce in the manner hereinafter more fully set out: that is to say, the said "floor" is
30 operated under a set of arbitrary and rigidly enforced rules and regulations made and enforced by the individual defendant and the defendants B. F. Keith Vaudeville Exchange and Orpheum Circuit, Inc., with which the proprietors of theatres, the managers and personal representatives of acts, entertainers, entertainments and performers, and the owners of such acts, entertainers, entertainments and performers are coerced into complying, under penalty of being blacklisted, and barred from future access to the said "floors" and from thereafter entering into any contract for the production of high class vaudeville entertainments with the said defendants, or any of the houses which they own, dominate or control. The said rules and regulations are in part as follows: All theatres constituting Keith and the Orpheum Circuits, and all other theatres doing business on said "floor," must book only performers, entertainers, entertainments and acts which are privileged to the booked upon the said "floor"; all managers and personal representatives must book only with the owners of theatres who are privileged to book upon the said "floor." That in order to be so booked the said acts must be in good standing with the said defendants herein, and must, if they have a manager or personal representative, be managed and represented by a person acceptable to the said defendants, and permitted to go upon the said "floor." That the said managers and proprietors of the said theatres are not entitled, and are refused admission to the said "floor" for the purpose of securing performers and acts, if they book acts or performers other than those privileged to book upon the said "floor," whether such bookings take place on said "floor" or elsewhere. That for the privilege of being allowed and permitted to secure booking upon the said Orpheum and Keith Circuits, all acts and performers must enter into a separate
31 agreement for each week of their performance, by the terms of which said contract for each week the acts and performers are to appear on the Keith Circuit, the B. F. Keith Vaudeville Exchange is entitled to and does unlawfully exact and receive a fee or payment of 5 per cent. of the entire gross salaries of, or compensation paid for the said acts and performers; and for each week that the said acts and performers appear on the Orpheum Circuit, the Orpheum Circuit, Inc., is entitled to and does unlawfully exact and receive a fee or payment of 5 per cent. of the entire gross salaries of, or compensation paid for the said acts and performers, and unless the owners of said acts and entertainments or their personal representatives and managers agree to this exaction, they are forever de-

barred from performing upon the Orpheum or Keith Circuits, or either of them, or of making contracts with the owners of any theatres owned, controlled or dominated by the said defendants whether such contracts are in fact negotiated upon said "floor" or elsewhere. That as a result of said unlawful practices on the part of the said defendants, the compensation which the said personal representatives and managers of said artists, actors, performers and proprietors of acts and entertainments in vaudeville is greatly reduced in, to wit: to the amount represented by said unlawful exaction. The securing of acts upon the said circuits is arranged through the manager or personal representative of the said acts and performers, who, if he be acceptable to the defendants herein, is permitted access to said "floor," where he meets the proprietor and/or booking manager of the said individual theatres comprising the said Orpheum and Keith Circuits. In order to be permitted upon the said "floor," the said personal representative and manager is required to enter into separate contracts with the defendants
32 Excelsior Collection Agency, Inc., and with Harry W. Gugler doing business under the name and style of Vaudeville Collection Agency, by the terms of which said contracts various amounts agreeable to the said Excelsior Collection Agency, Inc., and the said Harry W. Gugler are deducted from the earnings of the said personal representative and manager, and this, in the case of the plaintiff, was an amount equal to 2½ per cent. of the gross earnings of the performers and acts managed by him. If the manager or personal representative refused to accede to any of the rules or regulations herein, he is not permitted to appear upon the said "floor" and secure booking for the performers and acts he represented in any of the Keith or Orpheum Circuit Theatres, and further, that if the said manager or personal representative were refused admission to the said "floor" by reason of the fact that he was unacceptable for any reason to the said defendants herein, no act or performer entering into a contract with the said personal representative or manager engaging him as said personal representative or manager could secure employment upon the Keith and/or Orpheum Circuits.

XXXII. In or about the month of November, 1920, and for a long time prior thereto, and at all times since, at the City, County and State of New York, and Southern District of New York, the defendants herein entered into and at all times since have maintained an unlawful conspiracy and combination; the purpose, motive and effect of the said conspiracy and combination was to unduly restrict competition to unduly obstruct the course of trade, so then and since then carried on and conducted by the said defendants at the aforesaid theatres in the Keith Circuit and the Orpheum Circuit as aforesaid; and also to unduly restrict and obstruct the aforesaid business, so then and since then carried on and con-
33 ducted by the aforesaid owners and proprietors of the aforesaid theatres in the said Keith Circuit and Orpheum Circuit, other than those owned, managed and controlled by the aforesaid defendants, and from said date, and continuously at all times from said date, and until the date of the filing of this complaint, all of

the said defendants were and now are knowingly and wilfully engaged in the said unlawful conspiracy and combination, and in the furtherance of its unlawful object and purpose aforesaid, and so at all such times were continuously, and now are, engaged in an unlawful and corrupt conspiracy and combination in restraint of said business, trade and commerce, and for the purpose of unduly restricting competition in said business, unduly obstructing the course of trade in said business, and the purpose, motive and effect of said combination and conspiracy was and at all times herein mentioned has been and now is to secure the absolute monopoly of high class vaudeville business in each and all of the states of the United States of America and in interstate commerce, to the great and irreparable injury and detriment of this plaintiff and said unlawful conspiracy and combination was to be, has been and is being accomplished by said defendants as aforesaid in the manner and by the means following, to wit:

(A) By defendants E. F. Albee and Proctor and Murdock conspiring and agreeing together not to employ any person to perform for them in vaudeville at their respective theatres, owned, controlled and operated by them as aforesaid, except through the agency of the defendant B. F. Keith Vaudeville Exchange; and in and by these defendants adhering to and carrying out such agreement.

(B) By defendants E. F. Albee, Proctor, Murdock and B. F. Keith Vaudeville Exchange agreeing together that said B. F. Keith Vaudeville Exchange should not act as agent for the owner or proprietor of any of the aforesaid theatres in the aforesaid Keith Circuit where such owner or proprietor employed any person to perform in vaudeville at such theatre through any agency other than the defendant B. F. Keith Vaudeville Exchange; and in and by said defendants adhering to and carrying out such agreement.

(C) By defendants E. F. Albee, Proctor, Murdock and B. F. Keith Vaudeville Exchange agreeing together to cause, procure and compel all owners and proprietors of all the aforesaid theatres in the Keith Circuit aforesaid to promise and agree with said defendants not to employ any person to perform in vaudeville at their respective theatres aforesaid, except through the agency of the defendant B. F. Keith Vaudeville Exchange; and in and by said defendants adhering to and carrying out such agreement.

(D) By defendants E. F. Albee, Proctor, Murdock and B. F. Keith Vaudeville Exchange agreeing together that said B. F. Keith Vaudeville Exchange should not employ any person to perform in vaudeville at any of the aforesaid theatres in the Keith Circuit aforesaid if such person shall have performed in vaudeville in any theatre in the United States or the Dominion of Canada other than the aforesaid theatres in the Keith Circuit and the Orpheum Circuit; and in and by said defendants adhering to and carrying out such agreement.

(E) By defendants E. F. Albee, Proctor, Murdock and B. F. Keith Vaudeville Exchange agreeing together that said United Booking Offices of America should blacklist any person who should per-

form in vaudeville at any theatre in the United States or
35 the Dominion of Canada other than the aforesaid theatres in the Keith Circuit and Orpheum Circuit without its approval; and that such person having been so blacklisted should be debarred from thereafter performing at any of the aforesaid theatres in said Keith Circuit and Orpheum Circuit, and that the owners and proprietors of all theatres in said circuits should be notified of such blacklisting and forbidden to thereafter employ such performer under pain of being themselves blacklisted and thereafter being debarred from doing business with or through the United Booking Offices of America; and in and by said defendants adhering to and carrying out such agreement.

(F) By defendants E. F. Albee, Proctor, Murdock and B. F. Keith Vaudeville Exchange agreeing together that said United Booking Offices of America should not act as agent for the owner or proprietor of any theatre in the aforesaid Keith Circuit who should employ any person to perform in vaudeville for him or them after such person should have been blacklisted as aforesaid; and in and by said defendants adhering to and carrying out such agreement.

(G) By defendants E. F. Albee, Proctor, Murdock and B. F. Keith Vaudeville Exchange agreeing together not to employ any person to perform for them in vaudeville at any of their respective theatres aforesaid when such person should be represented by or have in his or her employ as manager or personal representative any person who shall have obtained employment for any person to perform in vaudeville in any theatre in the United States or in the Dominion of Canada other than the aforesaid theatres in the Keith Circuit and Orpheum Circuit aforesaid; and in and by said
36 defendants adhering to and carrying out said agreement.

(H) By defendants E. F. Albbee, Proctor, Murdock and the B. F. Keith Vaudeville Exchange agreeing together that said B. F. Keith Vaudeville Exchange should not act as agent for the owner or proprietor of any of the aforesaid theatres in the Keith Circuit aforesaid where such owner or proprietor should have employed any person to perform in vaudeville at his or their theatre when such person so employed was represented by or had in his or her employ as manager or personal representative any person who should have obtained employment in vaudeville for any performer at any theatre in the United States or the Dominion of Canada other than the aforesaid theatres in the Keith Circuit and the Orpheum Circuit aforesaid; and in and by said defendants adhering to and carrying out said agreement.

(I) By defendants E. F. Al'ee, Proctor, Murdock and B. F. Keith Vaudeville Exchange agreeing together that said B. F. Keith Vaudeville Exchange should blacklist any person acting as manager or personal representative of vaudeville performers where such person should, as such manager or personal representative, obtain employment for any person to perform in vaudeville or otherwise in any theatre other than the aforesaid theatres in the Keith Circuit and Orpheum Circuit aforesaid, and that such person having been so blacklisted should be debarred from thereafter negotiating with

said B. F. Keith Vaudeville Exchange for the employment of any person to perform in vaudeville at the aforesaid theatres in said Keith Circuit, and that the owners and proprietors of all theatres in said circuits should be notified of such blacklisting and forbidden thereafter to employ any performer who employed or was repre-
37 sented by any such manager or personal representative so blacklisted under pain of being themselves blacklisted; and in and by said defendants adhering to and carrying out said agreement.

(J) By defendants E. F. Albee, Proctor, Murdock and B. F. Keith Vaudeville Exchange agreeing together that said B. F. Keith Vaudeville Exchange should not act as agent for the owner or proprietor of any theatre in the aforesaid Keith Circuit who should employ any person to perform for him or them in vaudeville when such person so employed was at the time of such employment represented by any manager or personal representative who should have been blacklisted as aforesaid; and in and by said defendants agreeing together to blacklist any performer who should employ any person as manager or personal representative who should have been blacklisted as aforesaid; and in and by adhering to and carrying out such agreements.

(K) By defendants E. F. Albee, Proctor, Murdock and B. F. Keith Vaudeville Exchange agreeing together that said B. F. Keith Vaudeville Exchange should notify all owners and proprietors of the aforesaid theatres in the Keith Circuit aforesaid of all performers blacklisted as aforesaid, and that any owner or proprietor employing such blacklisted performer to perform for him or them in his or their theatre would not thereafter be able to employ any performers through the agency of said B. F. Keith Vaudeville Exchange, and by said defendants agreeing that said B. F. Keith Vaudeville Exchange should blacklist any owner or proprietor of any theatre who should employ any performer blacklisted as aforesaid; and in and by said defendants adhering to and carrying out such agreement.

38 (L) By defendants E. F. Albee, Proctor, Murdock and B. F. Keith Vaudeville Exchange agreeing together that the defendant B. F. Keith Vaudeville Exchange should notify the defendant Orpheum Circuit, Inc., and formerly its said predecessor, of any and all performers, managers, personal representatives, owners and proprietors who should be blacklisted as aforesaid; and in and by said defendants adhering to and carrying out said agreement.

(M) By defendants Meyerfeld, Jr., and Beck agreeing together not to employ any person to perform for them in vaudeville at their respective theatres owned, controlled and operated by them as aforesaid, except through the agency of the defendant Orpheum Circuit, Inc., and formerly its said predecessor; and in and by said defendants adhering to and carrying out such agreement.

(N) By defendants Meyerfeld, Jr., Beck and Orpheum Circuit, Inc., and formerly its said predecessor, agreeing together that said Orpheum Circuit, Inc., and formerly its said predecessor, should not act as agent for the owner or proprietor of any of the aforesaid thea-

tres in the aforesaid Orpheum Circuit where such owner or proprietor employed any person to perform in vaudeville at such theatre through any agency other than the defendant Orpheum Circuit, Inc., and formerly its said predecessor; and in and by said defendants adhering to and carrying out such agreement.

(O) By defendant Meyerfeld, Jr., Beck and Orpheum Circuit, Inc., and formerly its said predecessor, agreeing together to cause, procure and compel the owners and proprietors of all the aforesaid theatres in the Orpheum Circuit aforesaid to promise and agreement with said defendants not to employ any persons to perform in vaudeville at their respective theatres aforesaid, except through the
39 agency of the defendant Orpheum Circuit, Inc., and formerly its said predecessor; and in and by said defendants adhering to and carrying out such agreement.

(P) By defendants Meyerfeld, Jr., Beck and Orpheum Circuit, Inc., and formerly its said predecessors, agreeing together that said Orpheum Circuit, Inc., and formerly said predecessors, should not employ any person to perform in vaudeville at any of the aforesaid theatres in the Orpheum Circuit aforesaid if such person should have performed in vaudeville in any theatre in the United States or the Dominion of Canada other than the aforesaid theatres in the Keith Circuit and Orpheum Circuit aforesaid; and in and by said defendants adhering to and carrying out such agreement.

(Q) By defendants Meyerfeld, Jr., Beck and Orpheum Circuit, Inc., and formerly its said predecessor, agreeing together that said Orpheum Circuit, Inc., and formerly its said predecessor, should blacklist any person who should perform in vaudeville at any theatre in the United States or the Dominion of Canada other than the aforesaid theatres in the Keith Circuit and Orpheum Circuit, and that such person having been so blacklisted should be debarred from thereafter performing at any of the aforesaid theatres in said Keith Circuit and Orpheum Circuit, and that the owners and proprietors of all of the theatres in said circuits should be notified of such blacklisting and forbidden to thereafter employ such performers under pain of being themselves blacklisted; and in and by said defendants adhering to and carrying out such agreement.

(R) By defendants Meyerfeld, Jr., Beck and Orpheum Cir-
40 cuit, Inc., and formerly its said predecessor, agreeing together that said Orpheum Circuit, Inc., and formerly its said predecessor, should not act as agent for the owner or proprietor of any theatre in the Orpheum Circuit who should employ any person to perform in vaudeville for him or them after such performer should have been blacklisted as aforesaid; and in and by said defendants adhering to and carrying out such agreement.

(S) By defendants Meyerfeld, Jr., and Beck agreeing together not to employ any person to perform for them in vaudeville at any of their respective theatres aforesaid when such person should be represented by or have in his or her employ as manager or personal representative any person who should have obtained employment for any person to perform in vaudeville in any theatre in the United States or the Dominion of Canada other than the aforesaid theatres

in the Keith Circuit and Orpheum Circuit aforesaid; and in and by said defendants adhering to and carrying out said agreement.

(T) By defendants Meyerfeld, Jr., Beck and Orpheum Circuit, Inc., and formerly its said predecessor, agreeing together that said Orpheum Circuit, Inc., and formerly its said predecessor, should not act as agent for the owner or proprietor of any of the aforesaid theatres in the Orpheum Circuit aforesaid where such owner or proprietor should have employed any person to perform in vaudeville at his or their theatre when such person so employed was represented by or had in his or her employ as manager or personal representative any person who should have obtained employment in vaudeville for any performer at any theatre in the United States or the Dominion of Canada other than the aforesaid theatres in the Keith Circuit and the Orpheum Circuit aforesaid; and in and by said defend-
41 ants adhering to and carrying out said agreement.

(U) By defendants Meyerfeld, Jr., Beck and Orpheum Circuit, Inc., and formerly its said predecessor, agreeing together that said Orpheum Circuit, Inc., and formerly its said predecessor, should blacklist any person acting as manager or personal representative of vaudeville performers where such person should as such manager or personal representative obtain employment for any person to perform in vaudeville in any theatre other than the aforesaid theatres in the Orpheum Circuit and Keith Circuit aforesaid; and that such person having been so blacklisted should be debarred from thereafter negotiating with said Orpheum Circuit, Inc., and formerly its said predecessor, for the employment of any person to perform in vaudeville at the aforesaid theatres in said Orpheum Circuit, and that the owners and proprietors of all theatres in said circuits should be notified of such blacklisting and forbidden thereafter to employ any performer who employed or was represented by any such manager or personal representative so blacklisted under pain of being themselves blacklisted; and in and by said defendants adhering to and carrying out said agreement.

(V) By defendants Meyerfeld, Jr., Beck and Orpheum Circuit, Inc., and formerly its said predecessor, agreeing together that said Orpheum Circuit, Inc., and formerly its said predecessor, should not act as agent for the owner or proprietor of any theatre in the aforesaid Orpheum Circuit who should employ any person to perform for him or them in vaudeville when such person so employed was at the time of such employment represented by any manager or personal representative who should have been blacklisted as
42 aforesaid; and in and by said defendants agreeing together to blacklist any performer who should employ any person as manager or personal representative who should have been blacklisted as aforesaid; and in and by adhering to and carrying out such agreement.

(W) By defendants Meyerfeld, Jr., Beck and Orpheum Circuit, Inc., and formerly its said predecessor, agreeing together that the defendant Orpheum Circuit, Inc., and formerly its said predecessor, should notify all owners and proprietors of the aforesaid theatres in the Orpheum Circuit aforesaid of all such performers blacklisted

as aforesaid, and that any owner or proprietor employing such blacklisted performer to perform for him or them in his or their theatre would not thereafter be able to employ any performers through the agency of said Orpheum Circuit, Inc., and formerly its said predecessor, and by said defendants agreeing that said Orpheum Circuit, Inc., and formerly its said predecessor, should blacklist any owner or proprietor of any theatre who should employ any performer blacklisted as aforesaid; and in and by said defendants adhering to and carrying out said agreement.

(X) By defendants Meyerfeld, Jr., Beck and Orpheum Circuit, Inc., and formerly its said predecessor, agreeing together that the defendant Orpheum Circuit, Inc., and formerly its said predecessor, should notify the defendant B. F. Keith Vaudeville Exchange of any and all performers, managers, personal representatives, owners or proprietors who should be blacklisted as aforesaid; and in and by said defendants adhering to and carrying out said agreement.

(Y) By defendants B. F. Albee, Proctor, Murdock and B. F. Keith Vaudeville Exchange, Meyerfeld, Jr., Beck and Orpheum Circuit, Inc., and formerly its said predecessor, agreeing together that the Orpheum Circuit, Inc., and formerly its said predecessor, as agent for the aforesaid theatres in the Orpheum Circuit aforesaid, should not employ any person to perform in vaudeville in any of the theatres in said circuit when such person should be blacklisted by the defendant B. F. Keith Vaudeville Exchange as aforesaid, and that the defendant B. F. Keith Vaudeville Exchange of America, as agent for the aforesaid theatres in the Keith Circuit as aforesaid, should not employ any person to perform in vaudeville in any of the theatres in said circuit when such person should be blacklisted by the defendant Orpheum Circuit, Inc., and formerly its said predecessor as aforesaid.

43

(Z) By defendants B. F. Keith Vaudeville Exchange, E. F. Albee, Proctor, Murdock, Meyerfeld, Jr., Beck and Central Vaudeville Promotion Company entering into an agreement in writing with H. B. Marinelli, Limited, wherein and whereby, upon information and belief, in consideration of the discontinuance of an action theretofore brought and then pending in the United States District Court for the Southern District of New York, wherein H. B. Marinelli, Limited, was plaintiff and the defendants above named, together with Benjamin F. Keith, were defendants, for the recovery of the sum of $3,000,000 as damages, claimed by the plaintiff therein to have been sustained by reason of the violation by the defendants above named, except H. B. Marinelli, Limited, of the Act of Congress approved July 2nd, 1890, and entitled, "An Act to Protect Trade and Commerce against Unlawful Restraint and Monopolies, etc.," the defendants above named, except H. B. Marinelli, Limited, granted to H. B. Marinelli, Limited, the sole and exclusive right, privilege and license to book all foreign acts that should or might thereafter play at or in any theatre comprised within the Keith or Orpheum Circuits as hereinbefore described; and in and by said defendants adhering to and carrying out said agreement.

44

(A-1) By the defendants B. F. Keith Vaudeville Exchange, E. F.

Albee, Proctor, Murdock, Meyerfeld, Jr., Beck, H. B. Marinelli, Limited, and Central Vaudeville Promotion Company agreeing together that H. B. Marinelli, Limited, should not enter into a contract for the presentation, performance or exhibition of any foreign act except as such theatres as are owned, operated or controlled by the other defendants, including those theatres comprised within the Keith and Orpheum Circuits as hereinbefore described; and in and by the said defendants adhering to and carrying out the said agreements.

(A-2) By all of the defendants herein entering into a combination, conspiracy and agreement to enforce compliance with the rules and regulations and to carry out the purposes, objects and intents for which the booking exchange herein described in paragraph XXXI of this complaint was organized and formed, and have at all times herein mentioned carried out the said agreement, conspiracy and combination.

XXXIII. Upon information and belief, that in or about the month of November, 1920, and thereafter, defendants herein unlawfully designing and wickedly contriving to injure plaintiff in his business aforesaid, and unlawfully designing and wickedly contriving to destroy plaintiff's said business, and to drive plaintiff out of said business, and of preventing him from thereafter conducting said business, and in furtherance of, and pursuant to the aforesaid unlawful combination and conspiracy, unlawfully declined and refused to book or to arrange for the employment of acts, performers, entertainers and entertainments managed or represented by plaintiff as aforesaid; declined and refused to allow plaintiff or any of plaintiff's agents or representatives upon the aforesaid "floor"; and declined and refused to enter into contracts with any act, performer, entertainer or entertainment or with the owner of any vaudeville act of any kind managed or represented by plaintiff, and have declined or refused to allow plaintiff to negotiate with acts, performers, entertainers and entertainments or proprietors belonging to or connected with the Keith and Orpheum Circuits, and notified plaintiff that all of said privileges had been withdrawn from him, and that he could not exercise any of said rights or privileges at any time thereafter; that acting in pursuance to the aforesaid unlawful combination and conspiracy, the said defendants at all times since have failed and refused to book any new acts, performers, entertainers and entertainments not already booked, managed or represented by plaintiff, or to rebook any of plaintiff's old acts, performers, entertainers or entertainments, and have failed and refused to enter into contracts with any act, performer, entertainer and entertainment managed or represented by the plaintiff for his or her appearance or presentation or performance in any of said theatres owned, operated, managed or controlled by said defendants aforesaid, and have failed and refused to enter into contracts with the owner of any vaudeville act, performer, entertainer and intertainment managed or represented by plaintiff; and at all times since said date all of the said defendants, in furtherance of said unlawful com-

bination and conspiracy, have failed and refused to book any
46 act, performer, entertainer or entertainment managed or represented by plaintiff, and have failed and refused to enter into contracts with the owner of any act, performer, entertainer and entertainment or with any act, performer, entertainer and entertainment managed or represented by plaintiff for its, his or her appearance or presentation or performance at any of said theatres owned, operated, managed and controlled by the said defendants as aforesaid; and in furtherance of said unlawful design to injure plaintiff in his business aforesaid, and to destroy plaintiff's said business, have cautioned all of the actors, performers and owners of vaudeville acts who had contracts with plaintiff that unless they terminated their relations with plaintiff and ceased to have him represent them as personal manager and representative, such performers, acts and owners of vaudeville acts could not thereafter appear, or have their acts appear, in any theatre belonging to or connected with the Keith or Orpheum Circuit; and plaintiff alleges, upon information and belief, that unless herein restrained by this Court from so doing, the defendants will continue so to do, thereby causing him irreparable injury, destroying his business and preventing him from engaging in said business during the remainder of his natural life.

XXXIV. That as a result of the aforesaid unlawful combination and conspiracy and the unlawful acts of the defendants in furtherance thereof as aforesaid, plaintiff's business each week has become and is becoming less valuable and is becoming entirely destroyed and plaintiff is becoming no longer able to represent acts, performers, entertainers and entertainments engaged in performing high class vaudeville in the United States and in the Dominion of Canada, or to obtain employment for anyone in any of the theatres aforesaid in the Keith and Orpheum Circuits aforesaid, by
47 reason thereof plaintiff's good will and his business aforesaid throughout the United States and the world has been and is greatly damaged.

XXXV. That by reason of the fact that plaintiff's entire life as aforesaid has been devoted to the business of being a personal representative and manager of acts, performers, entertainers and entertainments in high class vaudeville, and by reason of his specialization thereto, and the unusual proficiency he has attained therein, he cannot efficiently engage in any other class of business.

That unless the defendants are restrained from continuing in their unlawful monopoly and restriction of competition, and undue obstruction of the course of trade in the said business conducted by the said defendants herein, plaintiff's business will shortly be entirely destroyed and plaintiff will be unable to adequately engage in business.

XXXVI. That by reason thereof plaintiff has been damaged in the sum of $1,000,000, and in addition thereto in the further sum of $500,000, owing to the unlawful deduction of the 5 per cent of the gross earnings of all the acts, performers, entertainers and entertainments by the defendants, as set forth in paragraph XXXI hereof, and the further sum of $250,000, owing to the unlawful deduction of

the 2½ per cent of the gross earnings of all the acts, performers, entertainers and entertainments by the defendants, as set forth in paragraph XXXI hereof.

XXXVII. That plaintiff has protested against said unlawful acts and has urged, demanded and insisted that said acts of the defendants should cease, and that he should be permitted to continue
48 to carry on his business, but the defendants arrogantly refused to discontinue their actions, but persisted therein, and informed the plaintiff that he could not thereafter continue in said business.

XXXVIII. Notwithstanding said efforts of the said defendants to destroy plaintiff's business as aforesaid, the plaintiff has continued in his efforts to remain in said business and to enter into contracts for artists, actors, performers, entertainers and entertainments represented by him with the proprietors of theatres belonging to or connected with the said Keith or Orpheum Circuit, but the owners of said theatres, acting under the domination, control and coercion of these defendants, and the threats that they themselves would become blacklisted in the event that they negotiated with the plaintiff, have failed and refused to permit any act or acts, artists, performers, entertainers or entertainments represented by him to book at their respective theatres.

Wherefore, plaintiff demands judgment that the defendants, and each of them, their agents, servants, employees and officers, and each of them, be restrained and enjoined during the pendency of this suit and forever afterwards by an order and injunction of this Court from in any way, directly or indirectly, interfering with or preventing the participation of plaintiff in negotiating contracts for acts, performers, entertainers and entertainments in high class vaudeville; from interfering with and preventing proprietors and owners of theatres on the Keith and Orpheum Circuits and the theatres either owned or dominated by the defendants from giving employment to those acts, performers, entertainers and entertainments represented or managed by plaintiff; from refusing to give employment upon the aforesaid Keith and Orpheum Cir-
49 cuits, and in the theatres owned, dominated and controlled by the said defendants to the acts, performers, entertainers and entertainments represented or managed by plaintiff; from refusing plaintiff admission to the aforesaid "floor" and exchange, and participation thereon and therein in the affairs of high class vaudeville; from in any way discriminating against plaintiff or the acts that he may represent, from maintaining and operating the monopoly and obstruction of the course of trade in the said business conducted by the defendants herein, and the restriction of competition therein, as set forth in this complaint, and more particularly from the maintenance of the aforesaid "floor" and exchange under the unreasonable and unlawful rules and regulations as herein set forth, and from collecting and retaining from the acts, performers, entertainers and entertainments represented and managed by plaintiff, 5 per cent of the gross earnings of the said acts, performers, entertainers and entertainments for the alleged booking by or

through said defendants herein of said acts, and from requiring the payment of said 5 per cent of the said gross earnings of said acts, performers, entertainers and entertainments as aforesaid as a condition to the right of such entertainers to do business with the Orpheum and Keith Circuits and from collecting and retaining or requiring the collection or retainment of 2½ per cent of the gross earnings of the said acts, performers, entertainers and entertainments by the said Excelsior Collection Agency, Inc., and Harry W. Gugler, doing business under the trade name and style of Vaudeville Collection Agency, and from doing or performing each and every of the said unlawful acts complained of in this complaint, whether particularly set forth herein or not.

50 That plaintiff have judgment against the defendants, and each of them, for the damage and injury sustained by him by reason of the said unlawful acts herein complained of, in the sum of $5,250,000, together with an allowance as and for counsel fee as to this Honorable Court shall seem reasonable, together with the costs and disbursements of this action, and for such other and further relief as may be just and equitable.

And as the plaintiff is without adequate remedy save in a court of equity, plaintiff prays this Honorable Court to issue its writ of subpœna in due form, directed to the said defendants aforesaid and each of them, commanding them, and each of them, to appear before this Honorable Court and to make full, true and perfect answers to all and singular the matters and things hereinbefore set forth and complained of, but not under oath, an answer under oath hereby being expressly waived. Eppstein & Axman, Attorneys for Plaintiff, Office & P. O. Address, 175 Fifth Avenue, Borough of Manhattan, City of New York. Louis B. Eppstein, Laurence H. Axman, Solicitors for Complainant.

51 City, County and State of New York, *ss.*:

Max Hart, being duly sworn, deposes and says: That he is the above-named plaintiff; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. Max Hart.

Sworn to before me this 25th day of May, 1921. Evelyn Greenfield, Notary Public. Bronx Co. No. 45; Reg. No. 2242. Cert. filed in N. Y. Co. No. 256; Reg. No. 2238. Term Expires March 30, 1922.

[Endorsement omitted.]

52 [Title omitted.]

Before Honorable Julian W. Mack, Circuit Judge (Holding District Court).

Martin W. Littleton, Esq., Louis S. Eppstein, Esq., and Lawrence H. Axman, for Plaintiff.

William F. S. Hart, Esq., for Defendant Proctor.

Maurice Goodman, Esq., for Defendant B. F. Keith Vaudeville Exchange.

Charles H. Studin, Esq., for Defendants Orpheum Circuit, Inc., Martin Beck, Frank Vincent and Excelsior Collection Agency.

J. Henry Walters, Esq., for defendants Reid A. Albee, Edward F. Albee and John J. Murdock.

Edward E. McCall, Esq., for Defendants Maurice Goodman and Harry N. Gugler.

MEMORANDUM OPINION.

[Filed Nov. 20, 1922.]

Julian W. Mack, Circuit Judge.

53 The Court (orally): Gentlemen, I have not prepared any opinion in this matter but the conclusions I reached yesterday, upon further study, are confirmed.

It seems to me that the question is not whether interstate commerce, interstate transportation of property and persons is necessarily contemplated and necessarily results from the transaction. Of course, it does. It does in the baseball case. There it was necessarily contemplated that there should be an interstate transportation of baseball players and interstate transportation necessarily results.

If the criterion laid down by Judge Hand in his decision in the Marinelli case had been adopted by the Supreme Court, this case would be clear, because it falls clearly within the Marinelli case. In my judgment however, the Supreme Court in the baseball case has not adopted that criterion, but it adopted one which prac-
54 tically is that the dominant object of the parties in respect to the matters complained of must affect or be interstate commerce; and in my judgment, that is so neither in the case of the defendants nor in the case of the plaintiff.

Of course, if the defendants conspired to ruin plaintiff's interstate commerce they would be just as guilty as if they conspired to monopolize for themselves interstate commerce, even though plaintiff were not engaged in it. It does not make any difference which side engages in the interstate commerce. But the defendants in my judgment, under the allegations of the bill and within the decision in the baseball case, are not engaged in interstate commerce; and neither is the plaintiff.

It is significant that, as to the plaintiff, it is not even expressly charged herein any paragraph of the bill, as it is in respect to the

several defendants, that he is engaged in interstate commerce; but of course, that is not a necessary allegation. I merely note that in passing. If the situation as to the plaintiff, as portrayed in the bill showed that he was engaged, in respect to the matters complained of, in interstate commerce, that would be sufficient.

But even though the plaintiff's activities that are disturbed by the defendants' alleged wrongful acts necessarily contemplate that there shall be a transportation of persons and goods in interstate commerce, as I read the bill—and of course, I confine myself now to the allegations in the bill—they are not dominantly interstate commerce.

Their object is to cause the artistic representations to be given not in one place but in many places, to be given in a series of places it is true. The giving of them in a series of places, just as
55 the giving of baseball games in a series of places, necessarily contemplates the transportation of persons and properties to and from those places. It may involve the actual purchase of the railroad tickets by the plaintiff on behalf of the performers, arranging for their transportation and any specific act of that kind may in itself be an act of interstate commerce. But all of those things are to my mind under the allegations of the bill incidental to the dominant purposes of the plaintiff's business, which is to act as broker on behalf of these performers in order to guard their interests and secure them their employments for what is an intrastate transaction.

It follows therefore, that both causes of action must be dismissed for want of jurisdiction over the subject matter stated in the bill in the Federal Court. Julian W. Mack, Circuit Judge.

[Endorsement omitted.]

56 [Title omitted.]

FINAL DECREE DISMISSING COMPLAINT.

[Filed Dec. 8, 1922.]

The issues in the action in equity herein having been duly brought to trial before Hon. J. W. Mack, Circuit Judge (holding District Court), at a Term of this Court held on the 31st day of October, 1922, all parties having appeared in person, and the defendants having moved to dismiss the complaint on the ground that this Court has no jurisdiction as a Federal Court of the subject matter of the complaint, and especially on the ground that the complaint does not set forth a cause of action arising under the Federal Constitution or under any Federal Law regulating commerce among the States, and the said question of jurisdiction having been argued by counsel, and it appearing upon the pleadings, and it being conceded that there is no such diversity of citizenship as would confer jurisdiction on the Court because of diversity of citizenship, and the Court being of the opinion that the complaint does not state a cause

of action under the Anti-Trust Laws of the United States, and that no other ground of jurisdiction appears from the record of this case, it is

57 Ordered, adjudged and decreed that the complaint in the equity action be and hereby is dismissed solely for want of jurisdiction in this Court of the subject matter of the complaint.

Dated, New York, December 8th, 1922. J. W. Mack, Circuit Judge holding District Court of the United States for the Southern District of New York.

[Endorsement omitted.]

CERTIFICATE OF JURISDICTIONAL QUESTION.

58 [Title omitted.]

[Filed Dec. 8, 1922.]

In this cause, I hereby certify that the judgment of dismissal herein is based solely on the ground that the cause set forth in the declaration in my opinion is not one arising under the Anti-Trust Laws of the United States, and no other ground of jurisdiction appears from the record in this case, and that the case is dismissed for want of jurisdiction for the reason above stated.

This certificate is made conformable to Judicial Code, Section 238, and the opinion filed herein is made a part of the record and will be certified and sent up as a part of the proceedings, together with this certificate.

Dated, New York, December 8th, 1922. J. W. Mack, Circuit Judge holding District Court of the United States for the Southern District of New York.

[Endorsement omitted.]

ASSIGNMENT OF ERRORS.

59 [Title omitted.]

[Filed Dec. 13, 1922.]

The plaintiff in this action in connection with his petition for writ of error, makes the following assignment of errors which he avers exist:

1. The Court erred in sustaining the motion of defendants to dismiss the complaint.

2. The Court erred in dismissing the complaint.

3. The Court erred in dismissing plaintiff's complaint upon the ground that it did not have jurisdiction of the subject matter of the complaint under any law regulating commerce among the States, and that no other ground of jurisdiction appears in said complaint.

4. The Court erred in holding that it was without jurisdiction or power to entertain the suit, and in dismissing the complaint herein. Eppstein & Axman, Attorneys for Plaintiff.

[Endorsement omitted.]

PETITION.

60 [Title omitted.]

[Filed Dec. 13, 1922.]

The above named plaintiff, conceiving himself aggrieved by the decree made and entered on the 8th day of December, in the above entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated, New York, the 13th day of December, A. D. 1922. Eppstein & Axman, Attorneys for Plaintiff.

The foregoing claim of appeal is allowed.

Dated: December 13th, 1922. J. W. Mack, U. S. C. J.

[Endorsement omitted.]

ORDER AS TO RECORD.

61 [Title omitted.]

[Filed Dec. 18, 1922.]

Notice having been served upon the attorneys for the respective defendants herein by the plaintiff, and a hearing having been had before me, and the præcipe submitted by the attorneys for the plaintiff, having been considered by me, it is hereby

Ordered and adjudged that the record on appeal of the Supreme Court of the United States in this matter, shall consist, as set forth in the plaintiff's præcipe, of the following papers:

1. Complaint, as amended.
2. The opinion of Hon. J. W. Mack, Circuit Court Judge, sitting as District Court Judge herein.
3. Final decree.
4. Certification of Hon. J. W. Mack.
5. Plaintiff-appellant's assignment of error.
6. Petition for leave to appeal to Supreme Court of the United States.
7. Citation from the Supreme Court of the United States with proof of service upon the defendants-respondents.

Dated, New York, December 15th, 1922. J. W. Mack, U. S. D. J.

[Endorsement omitted.]

62 & 63 The President of the United States of America, ss; to B. F. Keith Vaudeville Exchange, Orpheum Circuit, Inc., Excelsior Collection Agency, Inc., Edward F. Albee, John J. Murdock, Frederick F. Proctor, Martin Beck, Frank Vincent, Reed Albee, and Maurice Goodman and Harry W. Gugler, doing business under the trade name and style of Vaudeville Collection Agency; Greeting:

Whereas Max Hart has lately appealed to the Supreme Court of the United States, from a decree lately rendered in the District Court of the United States for the Southern District of New York, made in favor of you, the said B. F. Keith Vaudeville Exchange; Orpheum Circuit, Inc.; Excelsior Collection Agency, Inc.; Edward F. Albee; John J. Murdock; Frederick F. Proctor; Martin Beck; Frank Vincent; Reed Albee; and Maurice Goodman and Harry W. Gugler, doing business under the trade name and style of Vaudeville Collection Agency, and has filed the security required by law; you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, within 30 days from the date hereof, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the Second Circuit, this 13th day of December, in the year of our Lord one thousand nine hundred and twenty-two. J. W. Mack, U. S. Circuit Judge.

[Omitted.]

63½ [Endorsed:] Copy Received Dec. 14, 1922. W. F. S. Hart, Atty. for F. F. Proctor. Chas. H. Studin, Atty. for Defs. Beck et al. Maurice Goodman, Atty. for defs. B. F. K. V. Ex., Edwr. E. McCall, Atty. for defs. Goodman and Gugler. J. Henry Walters, Atty. for Defs. E. F. Albee, Reid Albee, and Murdock. E. 21-353. United States Dist. Court of the Southern District of New York. Max Hart, Plaintiff, against B. F. Keith Vaudeville Exchange et al., Defendants. Original Citation. Eppstein & Axman, Attorneys for Plaintiff, 175 Fifth Ave., Borough of Manhattan, New York City. U. S. District Court, S. D. of N. Y. Filed Dec. 15, 1922.

64 [Title omitted.]

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern Dis-

trict of New York, this twenty-second day of December, in the year of our Lord one thousand nine hundred and twenty-two, and of the Independence of the said United States the one hundred and forty-seventh. Alex. Gilchrist, Jr., Clerk. [Seal of the United States District Court of Appeals, Southern District of New York.]

65 [Endorsed:] United States District Court, Southern District of New York. Max Hart, Plaintiff, vs. B. F. Keith Vaudeville Exchange, Orpheum Circuit, Inc., and others, Defendants. Transcript of Record on Appeal to the U. S. Supreme Court.

Endorsed on cover: File No. 29,313. S. New York, D. C., U. S. Term No. 763. Max Hart, appellant, vs. B. F. Keith Vaudeville Exchange, Orpheum Circuit, Inc., Excelsior Collection Agency, Inc., et al. Filed December 27th, 1922. File No. 29,313.